

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 374

(Delegate Anderson)(By Request - Baltimore City
Administration)

Judiciary

Judicial Proceedings

Criminal Law - Pretrial Release - Prior Crimes

This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant (1) charged with a “crime of violence,” as defined in § 14-101 of the Criminal Law Article, if the defendant has previously been convicted of specified weapons offenses or (2) charged with one of a list of specified weapons offenses if the defendant has previously been convicted of a crime of violence.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for pretrial detentions in Baltimore City. Revenues are not affected.

Local Effect: Minimal increase in local expenditures for pretrial detentions. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A District Court commissioner may not authorize the pretrial release of a defendant charged with a crime of violence if the defendant has previously been convicted of one of the following crimes:

- wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article;

- use of a handgun or an antique firearm in commission of a crime under § 4-204 of the Criminal Law Article;
- violating prohibitions relating to assault weapons under § 4-303 of the Criminal Law Article;
- use of a machine gun in a crime of violence under § 4-404 of the Criminal Law Article;
- use of a machine gun for an aggressive purpose under § 4-405 of the Criminal Law Article;
- use of a weapon as a separate crime under § 5-621 of the Criminal Law Article;
- possession of a regulated firearm under § 5-133 of the Public Safety Article;
- transporting a regulated firearm for unlawful sale or trafficking under § 5-140 of the Public Safety Article; or
- possession of a rifle or shotgun by a person with a mental disorder under § 5-205 of the Public Safety Article.

The bill also prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with one of the weapons offenses listed above if the defendant has previously been convicted of a crime of violence.

Current Law: In most cases, pretrial release determinations are made at a defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants. Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions. Please see the **Appendix – Defendants Ineligible for Pretrial Release by a District Court Commissioner** for a comprehensive list of defendants ineligible for pretrial release by a District Court commissioner.

A defendant who is denied pretrial release by a District Court commissioner or who for any reason remains in custody after a District Court commissioner has determined conditions of release under Maryland Rule 4-216 must be presented to a District Court judge immediately if the court is in session, or if the court is not in session, at the next session of the court.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer (judge or commissioner) is required to take into account the following information, to the extent available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required or flight from prosecution; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and

length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the alleged victim, the community, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

Section 14-101(a) defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase minimally due to increased and/or lengthier pretrial detentions in Baltimore City. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

This estimate assumes that:

- the number of individuals affected by the bill represents a small subset of the entire pretrial population;
- individuals who fall into the category affected by the bill are also likely to be prohibited from being released by a District Court commissioner under an existing statutory exclusion (charged with a crime of violence with a prior conviction for a crime of violence or charged with one of the specified weapons offenses with a prior conviction for one of those offenses);
- a sizeable portion of the defendants affected by the bill may present situations that after consideration of the factors enumerated in statute and the Maryland Rules, dissuade a District Court commissioner from authorizing the defendant's pretrial release or persuade a District Court commissioner to impose conditions of pretrial release such that the defendant remains in pretrial custody long enough to be presented to a judge for a judicial bail review hearing; and
- a defendant is likely to receive the same conditions of pretrial release from a judge as he/she is from a commissioner.

DPSCS advises that the bill generally affects the length of stay a pretrial defendant would be housed in a detention facility. However, DPSCS cannot accurately assess the fiscal or operational impact of the bill with the data available.

According to DPSCS, based on fiscal 2015 expenditures, the cost of holding a defendant at the Baltimore Central Booking and Intake Center is \$180 per day. If the defendant is held more than 30 days, the defendant is transferred to the Baltimore Pretrial Complex.

The Judiciary advises that any restrictions on pretrial release result in longer detention times and an increase in the number of bail review hearings, which results in additional court and judicial time.

The Office of the Public Defender (OPD) represents indigent defendants at judicial bail review hearings. Under the bill, all of the defendants in the affected category appear before a judge for a judicial bail review hearing. OPD advises that, depending on the number of additional bail review hearings generated by the bill, OPD may need additional staff. However, using the assumptions listed above, the Department of Legislative Services advises that OPD can handle the bill's requirements with existing resources.

Local Expenditures: Using the assumptions listed above, local expenditures increase minimally for increased and/or lengthier pretrial detentions. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

The State's Attorney's Association advises that the bill has no effect on prosecutors.

Additional Information

Prior Introductions: None.

Cross File: SB 603 (Senator Pugh) - Judicial Proceedings.

Information Source(s): Baltimore and Montgomery counties, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Defendants Ineligible for Pretrial Release by a District Court Commissioner

Please refer to Criminal Procedure Article, § 5-202 for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.

In General

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants who are registered sex offenders and defendants charged:

- with a crime punishable by life imprisonment;
- with escaping from a correctional facility or any other place of confinement in the State;
- as a drug kingpin;
- with a crime of violence (as defined under Criminal Law Article, § 14-101), if the defendant has been previously convicted of a crime of violence under the laws of this State or has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland; and
- with violating the provisions of a domestic violence protective order (temporary or otherwise) ordering the defendant to refrain from abusing or threatening to abuse a person eligible for relief (applies to orders issued by a court in Maryland, another state, or by a Native American tribe).

Repeat Offender – Defendant Charged with a Specified Crime Who Has a Prior Conviction for a Specified Crime

A District Court commissioner may not authorize the pretrial release of a defendant charged with one of the following crimes ***if the defendant has previously been convicted of one of the following crimes:***

- wearing, carrying, or transporting a handgun under §4-203 of the Criminal Law Article;
- use of a handgun or an antique firearm in commission of a crime under §4-204 of the Criminal Law Article;
- violating prohibitions relating to assault weapons under §4-303 of the Criminal Law Article;

- use of a machine gun in a crime of violence under §4-404 of the Criminal Law Article;
- use of a machine gun for an aggressive purpose under §4-405 of the Criminal Law Article;
- use of a weapon as a separate crime under §5-621 of the Criminal Law Article;
- possession of a regulated firearm under §5-133 of the Public Safety Article;
- transporting a regulated firearm for unlawful sale or trafficking under §5-140 of the Public Safety Article; or
- possession of a rifle or shotgun by a person with a mental disorder under §5-205 of the Public Safety Article.

Repeat Offender – Defendant Charged with Committing a Specified Crime While Released on Bail or Personal Recognizance on a Prior Charge of Committing a Specified Crime

A District Court commissioner also may not authorize the pretrial release of a defendant charged with committing one of the following crimes ***while the defendant was released on bail or personal recognizance for a pending prior charge of committing one of the following crimes:***

- aiding, counseling, or procuring arson in the first degree;
- arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree;
- burglary in the first, second, or third degree;
- child abuse or sexual abuse of a minor;
- manufacture or possession of a destructive device;
- various offenses related to controlled dangerous substances (CDS), except for possessing or administering CDS;
- manslaughter by vehicle or vessel; and
- a crime of violence.